IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7753 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMAD ARIF MUSA PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7753 of 2002

MR AR SHAIKH for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 18-7-2002, by which he is detained under the Prevention of Antisocial Activities Act, (for short "the PASA" Act). Along with the order of detention, he is also served with the grounds of detention of the same date. In the said grounds, there is a reference of some pending criminal

cases against the petitioner under the provisions of the Arms Act. The Authority has also considered the statement of certain witnesses. Ultimately, after having been satisfied about the activities of the petitioner, the detaining authority has passed the said detention order. The petitioner has challenged the aforesaid order on various grounds.

2) The learned advocate for the petitioner submitted that at the relevant time when the detention order was passed, the petitioner was already in judicial custody in connection with the criminal case referred in the detention order, at sr.no.1. He, therefore, submitted that the detaining authority has not properly considered the fact as to why it is necessary to detain the petitioner under the preventive detention even though he is already in judicial custody. The learned Advocate for the petitioner has relied upon the decision of Amritlal and other V. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 Supreme Court 3675 wherein it is observed as under:-

> 4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-
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> "Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as

is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

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6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down."

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

... ..."

3) In the instant case, the detaining authority has mainly stated that even though the petitioner is in judicial custody he may be released on bail at any time. The authority has not stated as to on what basis it has come to the conclusion that the petitioner may be released on bail at any point of time. There is nothing on record even to suggest that the petitioner has applied for bail in connection with the aforesaid criminal cases. Considering the aforesaid aspect of the matter, as well as, considering the judgement of the Apex Court, referred above, the order of detention is required to be set aside.

4) In view of the above, this petition is allowed. The order of detention dated 18-7-2002 is quashed and set aside. The detenu, Mohmad Arif Musa Patel is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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